



Town of Tyngsborough

Board of Appeals

Town Hall-25 Bryants Lane
Tyngsborough, Ma 01879-1003
(978) 649-2300, Ext. 112

Board of Appeals Minutes from June 8, 2006

Members Present- Robb Kydd, Gary Ralls, Eileen Farrell, Chris Mechalides, Claire Cloutier, and Cheryl Bradley.

1st Hearing- Hearing continued form May 11, 2006

Colin Spence, River Rd., Map 19, Lot 54 request for variance for frontage to construct a single-family dwelling. Lot has no frontage. Access to lot will be from a right of way. R-1 Zone section 2.12.42.

Received letter from Colin Spence dated June 7, 2006 requesting to withdraw this application.

Motion to allow the applicant to withdraw this application without prejudice by Ralls. Seconded by Farrell. Vote 5-0.

2nd Hearing- PC Homes Trust, 21 Davis St., Map 26a, parcel I63, request for special permit for 2nd level for construction of new house, will meet setbacks. R-2 Zone, section 2.15.22, 2.15.24.

Received letter from PC Homes Trust requesting that tonight's hearing be postponed to the next scheduled hearing which will be July 13, 2006.

Motion to allow the applicant to continue hearing to July 13, 2006 by Ralls. Seconded by Farrell. Vote 5-0. Hearing continued to July 13, 2006.

Hearing continued from May 11,2006-

Ominipoint Communications, Inc., T-Mobile USA Inc., 50 Coburn Rd., Map 26, parcel 33. Request variance and special permit to install, operate, and maintain a wireless communications facility, including without limitation, a 150' monopole, antennas, ground equipment, and fenced compound. R-1 Zone, sections 4.16, 2.12,2.15.22.

Legal notice read. Advertised in the Lowell Sun on May 25, 2006 & June 1, 2006. Abutters and Town Boards notified. No challenges to the legal notice or abutter notification.

Application presented by Rakesh Goel, Shawn Reid, Brian Grossman proposing "Flag Pole" style-reduces visual profile change in number of antennas.

Town Counsel, Charles Zaroulis was present at this hearing and spoke on the application.

Abutters speaking against the applicant were Henry Jungman, and Bob Sherburne. One abutter did not speak either for or against but had questions.

Two letters from Town Boards read into the record-from Police Dept and Conservation.

Discussion on public safety.

Question from members-

If granted, who takes care of the maintenance of the site? Answer-T-Mobile.

If variance is granted are we creating spot zoning? Answer from Town Counsel, cannot grant variance due to zoning by-law, but our bylaws are defective because they do not allow for "gaps in coverage" that we don't have sufficient areas zoned for towers. Omni has to show that they have made all efforts. If the board is satisfied that there are no alternative sites, it can be granted. Our consultant has said there is a gap.

Continued discussion and questions from board on the expected lifespan of pole, technological changes and improvements, satellites, extra antennae space rented, discussed what has been your best effort to locate at other sites.

Discussed the location of the tower. Discussed the relief from 500 feet from residence on Sherburne Lumber property. Discussion on why didn't you go to Planning Board first? Site is outside of overlay area. Planning Board is the outside authority.

Motion to close the public portion of the hearing by Ralls. Seconded by Cloutier. Vote 5-0.

Motion to approve application for telecommunication tower subject to approval of the decision to be prepared by Town Counsel, Charles Zaroulis. Seconded by Cloutier. Vote 4-1. Four votes for, one against. Robb Kydd did not vote on this application. Members voting for the applicant are Gary Ralls, Claire Cloutier, Cheryl Bradley, Chris Mechalides. Voting against the applicant is Eileen Farrell.

Motion by Ralls to continue this hearing to August 10, 2006 to review the decision, which is being prepared by Town Counsel, Charles Zaroulis and applicant's attorney. Seconded by Cloutier. Vote 5-0.

Hearing continued from April 13, 2006

Thomas Lantry, 50 Mission Rd., Map 29, Parcel 56, request for variance, special permit and a party as aggrieved of a decision made by the Building Commissioner- garage is being used as dwelling unit. R-1 Zone, 1.16.00,2.15.21,2.11.30.

Legal notice read. Advertised in the Lowell Sun on Jan. 26 & Feb 2, 2006. Town Board notified. No challenges to the legal notice or abutter notification.

The regular scheduled hearing for February 9, 2006 had only 4 voting members. The applicant requested to continue this hearing to April 13, 2006 for a 5 member voting board. The April hearing was continued to June 8, 2006 in order for the Building Commissioner to be present at this hearing.

Application presented by Atty. Timothy Ervine, Thomas Lantry and Ethan Zimmer.

Town Counsel, Charles Zaroulis was present at this hearing along with Building Commissioner, Mark Dupell.

Abutters speaking for the applicant was Michael Clement at 46 Mission Rd., and Jerome Earl, 48 Mission Rd. Both provided affidavits to the board.

One abutter spoke against the application.

One letter produced from Luke Bergeron (Electrician) acknowledging pulling permits for electrical installation.

Motion to close the public portion of the hearing was Farrell, seconded by Ralls, Vote 5-0.

Motion to uphold the Building Commissioners decision by Farrell, Seconded by Ralls. Vote 5-0.

Motion by Farrell to deny request for variance for 50 Mission Rd. due to the applicant failed to show hardship. Seconded by Ralls. Vote 5-0. Denied.

Motion by Ralls to deny request for special permit-failed to show hardship. Seconded by Cloutier. Vote 5-0 Denied.

Regular Scheduled Hearings for June 8, 2006.

Dana Stirling, LLC, 6 Cummings Rd. Map 13, parcel 13. request for extension, change or alteration of a pre-existing, nonconforming use or structure pursuant to

provisions of MGL , Ch 40A, section 6 and section 2.15.22 in order to maintain certain free standing shelving on the outside wall of the building closest to Cummings Rd., I-1 Zone.

Legal notice read. Advertised in the Lowell Sun on May 25 & June 1, 2006. Town Board notified. No challenges to the legal notice or abutter notification. Application read.

Atty. Suzanne Poitras and Greg Dana presented the application to the board.

Motion to continue hearing to August 10, 2006, at 6:30 PM by Ralls. Seconded by Mechalides. Vote 5-0.

Barbara Roche, 74 Mascuppic Trail, Map 32b, parcel 28a, requesting variance on the rear yard set back for the construction of an addition. R-2 Zone, section 2.12.50.

Legal notice read. Advertised in the Lowell Sun on May 25 & June 1, 2006. Town Boards notified. No challenges to the legal notice or abutter notification.

Application presented by Barbara Roche.

Motion to close the public portion of the hearing by Mechalides. Seconded Cloutier. Vote 5-0.

Motion by Ralls to approve application as submitted. Seconded by Farrell. Vote 5-0.

Other Business:

Approve minutes from May 11, 2006

Motion by Farrell to approve minutes from May 11, 2006. Seconded by Cloutier. Vote 5-0.